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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/712,490

11/13/2003

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EXAMINER

HOEKSTRA, JEFFREY GERBEN

ART UNIT

PAPER NUMBER

3736

MAIL DATE

DELIVERY MODE

10/24/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
After the Filing of an Appeal Brief

Application No.	Applicant(s)	
10/712,490	DUSSAUD ET AL.	
Examiner	Art Unit	
JEFFREY G. HOEKSTRA	3736	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The reply filed 20 October 2008 is acknowledged.

1. ☐ The reply filed on or after the date of filing of an appeal brief, but prior to a final decision by the Board of Patent Appeals and Interferences, will not be entered because:
- a. ☐ The amendment is not limited to canceling claims (where the cancellation does not affect the scope of any other pending claims) or rewriting dependent claims into independent form (no limitation of a dependent claim can be excluded in rewriting that claim). See 37 CFR 41.33(b) and (c).
- b. ☐ The affidavit or other evidence is not timely filed before the filing of an appeal brief. See 37 CFR 41.33(d)(2).

2. ☐ The reply is not entered because it was not filed within the two month time period set forth in 37 CFR 41.39(b), 41.50(a)(2), or 41.50(b) (whichever is appropriate). Extensions of time under 37 CFR 1.136(a) are not available.

Note: This paragraph is for a reply filed in response to one of the following: (a) an examiner's answer that includes a new ground of rejection (37 CFR 41.39(a)(2)); (b) a supplemental examiner's answer written in response to a remand by the Board of Patent Appeals and Interferences for further consideration of rejection (37 CFR 41.50(a)(2)); or (c) a Board of Patent Appeals and Interferences decision that includes a new ground of rejection (37 CFR 41.50(b)).

3. ☒ The reply is entered. An explanation of the status of the claims after entry is below or attached.
4. ☒ Other: Claims 1, 3-6, 8-11, and 17-20 remain finally rejected as set forth in the Office Action mailed 07/18/2008 under 35 U.S.C. 102(b) as being anticipated by Flament and claims 2 and 7 remaining finally rejected under 35 U.S.C. 103(a) as being unpatentable over Flament in view of Fleming.

Applicant's arguments filed 10/20/2008 with respect to the anticipatory and obviousness rejections of the claims under Flament have been fully considered but they are not persuasive. Applicant argues Flament does not disclose, teach, and/or fairly suggest an apparatus, comprising inter alia: creating and measuring acoustic emission signals from a body resulting from skin rubbing skin frictional forces. The Examiner disagrees, maintains the rejection as set forth and reiterated above, and in response notes the following:

In response to applicant's argument that Flament teaches away from the present claims which create emission signals representing skin/skin frictional forces resulting from a body contacting skin on skin, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

In the instant case, the Examiner notes that (a) Flament discloses "We have established a good correlation between the force of friction and the acoustic signal, so the measures made with the finger, provided with an acoustic sensor on the skin, allow to the clinicians and to the cosmetic industry to estimate the sensory properties while making a natural gesture of the touch. The device can be used to study the impact of a cosmetic formulation on the skin by evaluating the variations of sweetness, adhesion but especially effect of hydration as well as pathologies of the cutaneous tissue (psoriasis, eczema, dry skins...)", (b) the apparatus as disclosed by Flament is capable of the intended use or functional limitations comprising "by contacting skin on one area of the body with skin on another area of the body to produce skin/skin frictional forces", and (c) the disclosure of Flament provides various examples of testing frictional forces on various abrasive surfaces as noted by Applicant however as noted in (a) Flament is expressly concerned with the efficacy of the device to function as a skin-on-skin diagnostic apparatus.

/Max Hindenburg/
Supervisory Patent Examiner, Art Unit 3736

/Jeffrey G Hoekstra/
Examiner, Art Unit 3736